IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3319 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT REFFIA INDUSTRIES LTD.

Versus

SUNILKUMAR MALOO

Appearance:

1. Special Civil Application No. 3319 of 2004

MR RV DESAI for Petitioner No. 1

MR MR MENGDEY LD AGP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 05/05/2004

ORAL JUDGEMENT

Though, this Court had passed the order on 16.3.2004 and issued notice for final disposal, no body

has appeared on behalf of the respondent No. 1 on 29.4.2004. Today also, when the matter is taken up for final disposal, no body has appeared on behalf of respondent No. 1. Mr. M.R. Mengdey, learned AGP appeared on behalf of the respondent No. 2.

2. The short facts of the case are that the respondent No. 1 was working with the petitioner. It is the case of the petitioner that respondent was working in Managerial capacity. The respondent preferred an application being Application No. 25 of 1999 before the Controlling Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as "the Act") for receiving the amount of gratuity. The Controlling Authority initially proceeded ex-parte and passed the order on 12.7.2000, whereby, the direction was given to make the payment of the amount of gratuity of Rs.56,538=00 with interest at the rate of 10%. The petitioner thereafter appeared before the Controlling Authority by preferring Review Application being Review Application No. 5 of 2000 and contented inter-alia that by respondent No.1 has misappropriated the amount and any event, he would not be entitled for payment of gratuity. The Controlling Authority after hearing both the parties, as per order dated 22.1.2001 confirmed the order and dismissed the Review Application. The petitioner, thereafter, preferred an appeal being Appeal No. 8 of 2003 before the Appellate Authority and it is the case of the petitioner that since the amount as required for invoking the appellate power was not deposited within the requisite period, the appeal was not pursued. However, subsequently, the full amount, as ordered by the Controlling Authority has been deposited. Thereafter, the Appellate Authority considered the said appeal and found that the appeal is not preferred within the period of limitation and there is delay of 515 days in preferring the appeal and therefore, the appeal is dismissed as per order dated 16.12.2003 as time barred. The said order of the Appellate Authority of dismissing the appeal is under challenge in this petition.

3. I have heard Mr. Desai, learned advocate for the petitioner and Mr. M.R. Mengdey, learned AGP for the respondent No. 2 and as observed earlier, none has appeared on behalf of the respondent No. 1.

4. Mr. Desai for the petitioner submitted that the petitioner is ready to pay reasonable amount of cost towards compensation for default caused before the Controlling Authority and also cost of this litigation. He has submitted that as such the respondent No. 1 has

not appeared inspite of the notice served upon him and therefore, this Court may not order for payment of the cost of this litigation. Mr. Desai has submitted that his client has verified the position and the amount, which is deposited before the Controlling Authority pending the appeal, is uptil now not withdrawn by the respondent No.1. He submitted that as the matter proceeded ex-parte before the Controlling Authority and thereafter in review also, the grounds are not properly considered, this Court may consider the matter for directing the appellate authority to consider the appeal on merits.

5. Having considered the above and in view of the facts and circumstances of the case, it appears that the Appellate Authority has proceeded on the basis that the appeal is beyond the prescribed period and therefore, the appeal cannot be entertained. However, considering the peculiar circumstances that the matter proceeded ex-parte initially before the Controlling Authority and thereafter in review, the Controlling Authority has mainly proceeded on the basis that opportunity was given to the petitioner but the same is not availed by the petitioner, and on the question as to whether the respondent No. 1 was working as a Manager or in managerial capacity and as to whether, he would be covered by the provisions of the Act for entitlement to the amount of gratuity, are not properly examined and therefore, considering such peculiar circumstances, if the Appellate Authority is directed to decide the appeal on merits without considering the question of limitation, the same would meet with the ends of justice.

6. At the same time, the petitioner is a defaulter in not participating in the proceedings before the Controlling Authority within time and he is also defaulter in not preferring an appeal within stipulated time limit. Therefore, with a view to see that the defaulter cannot be allowed to take undue benefit of its own default and in view of the reasons recorded by this Court in Special Civil Application No. 9044 of 2002, even if the matter is to be reconsidered, the appropriate cost deserves to be awarded for compensating such defaults. Considering the facts and circumstances of the case, since there are two defaults, one at the level of Controlling Authority in not participating in the proceedings after giving opportunity and another is of not preferring an appeal within stipulated time limit, I find that the appropriate cost by way of compensation for such defaults would be of Rs.10,000=00 (Rs. Ten Thousand only). I leave the matter at this stage without

observing further, since Mr. Desai, learned advocate for the petitioner during the course of hearing has declared on behalf of the petitioner that petitioner is ready to pay the amount of Rs.10,000=00 as cost, if it is so ordered by this Court.

7. Under the above circumstances and in view of the aforesaid discussion, the order dated 16.12.2003 passed by the Appellate Authority in Appeal No. 8 of 2003 is quashed and set aside on condition that the petitioner pays the amount of Rs.10,000=00 (Rs. Ten Thousand only) as cost to respondent No. 1 and it is further directed that the Appellate Authority shall re-hear the appeal and after giving opportunity of hearing to both the sides, shall pass the order in accordance with law as early as possible, preferably within the period of 4 months from the receipt of the writ of this Court. Petition is allowed to the aforesaid extent. Rule is made absolute accordingly.

(Jayant Patel, J.)
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